

136 Box 56 - JGR/War Power – Roberts, John G.: Files SERIES
I: Subject File

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET

ROUTE SLIP

TO Greg Ballentine	Take necessary action <input type="checkbox"/>
Mike Horowitz	Approval or signature <input type="checkbox"/>
Al Keel	Comment <input type="checkbox"/>
Tom Stanners	Prepare reply <input type="checkbox"/>
Mike Esposito	Discuss with me <input type="checkbox"/>
John Cooney	For your information <input type="checkbox"/>
	See remarks below <input type="checkbox"/>
FROM Greg Jones (x3856)	DATE 11/3/83

REMARKS

Attached is testimony just received from Treasury for a hearing this afternoon at 1:00 PM before House Ways and Means.**

Secretary Regan has asked whether the sentence underlined on page 19 presents any problems vis-a-vis the War Powers Act.

Please advise asap.

**Regan to testify. (This testimony is excerpted from a much longer statement that addresses a number of miscellaneous tax bills.)

file: War Powers

JOHN ROBERTS

WH COUNSEL



OKAYED w/DOD
CHANGE ON
P. 19, PER
RAH
11/3 JBR



issued by the Service on this question was a significant step toward resolving some of the uncertainties in this area. In addition, there is an active regulations project which addresses the subject of travel expenses incurred in connection with temporary jobs. We hope that the project will be completed and that new regulations will be promulgated in proposed form in the near future. Because this area is now under intensive study and because we intend to propose rules of general application in this area, we must oppose the bill.

H.R. 4206
Income Tax Exemption for American Service Personnel
Who Die as a Result of Hostile Actions
Outside the United States

Background

Section 692 of the Code currently provides an income tax exemption to any individual who dies while in active service as a member of the United States Armed Forces, provided that the death (or the mortal injury or disease) occurred while the individual was serving in a "combat zone." The term combat zone covers only those areas which the President of the United States by Executive Order has designated as an area in which American servicemen are or have engaged in combat. No area has been so designated since April 24, 1965, when an Executive Order designated Vietnam and certain adjacent waters as a combat zone.

H.R. 4206

H.R. 4206 would extend the income tax exemption of section 692 to apply to any active member of the United States Armed Forces who dies as a result of a hostile action outside the United States, whether or not the death occurs in an area officially designated as a combat zone. This exemption would apply to any income tax imposed with respect to taxable years beginning with the first taxable year in which the member of the Armed Forces first served outside the United States, and ending with the year of death. The bill also waives liability for income tax (and for any interest, penalties or additions to tax) for taxable years preceding such years of foreign service which are still open as of the date of death. The bill would apply to all taxable years of individuals dying after December 31, 1979.

Discussion

The Administration strongly supports this proposal. We also commend this Subcommittee for its quick action in scheduling a hearing on this legislation in order to help assure its prompt

REGARD
THE
AF
AW
IN

incidents of violence,

passage.

We suggest, however, that several modifications be made to the bill as currently drafted. First, we recommend that the exemption apply to members of the Armed Forces who die as a result of wounds, disease, or injury received in the line of duty outside the United States as a result of conflict on behalf of the United States, or as a result of aggression directed against the United States or one of its allies.

Second, we would advise against extending the exemption retroactively to all years beginning with the year in which the deceased individual first was sent abroad. Such a rule would require the family of any deceased individual to go through the procedure of filing a claim for refund with the Internal Revenue Service in order to recover taxes paid for prior years. This requirement would run counter to one of the principal purposes of this exemption, which is to eliminate the need for any of these families to concern themselves with the tax liabilities of a deceased family member. Moreover, because the size of the refund claims would vary widely (depending upon how long the deceased person had served abroad as well as upon each individual's income), H.R. 4206 would result in the granting of significantly different sums of money to the families of those Armed Services personnel who are killed in the line of duty. We do not believe that this Subcommittee intends any such result.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET

ROUTE SLIP



TO Greg Ballentine	Take necessary action <input type="checkbox"/>
Mike Horowitz	Approval or signature <input type="checkbox"/>
Al Keel	Comment <input type="checkbox"/>
Tom Stanners	Prepare reply <input type="checkbox"/>
Mike Esposito	Discuss with me <input type="checkbox"/>
John Cooney	For your information <input type="checkbox"/>
	See remarks below <input type="checkbox"/>
FROM Greg Jones (x3856)	DATE 11/3/83

REMARKS

Attached is testimony just received from Treasury for a hearing this afternoon at 1:00 PM before House Ways and Means.**

Secretary Regan has asked whether the sentence underlined on page 19 presents any problems vis-a-vis the War Powers Act.

Please advise asap.

**Regan to testify. (This testimony is excerpted from a much longer statement that addresses a number of miscellaneous tax bills.)

11/9 -
called LM -
OK w/ no it
done w/ DOD.
Per KATH, 11/8
ESB



issued by the Service on this question was a significant step toward resolving some of the uncertainties in this area. In addition, there is an active regulations project which addresses the subject of travel expenses incurred in connection with temporary jobs. We hope that the project will be completed and that new regulations will be promulgated in proposed form in the near future. Because this area is now under intensive study and because we intend to propose rules of general application in this area, we must oppose the bill.

H.R. 4206
Income Tax Exemption for American Service Personnel
Who Die as a Result of Hostile Actions
Outside the United States

Background

Section 692 of the Code currently provides an income tax exemption to any individual who dies while in active service as a member of the United States Armed Forces, provided that the death (or the mortal injury or disease) occurred while the individual was serving in a "combat zone." The term combat zone covers only those areas which the President of the United States by Executive Order has designated as an area in which American servicemen are or have engaged in combat. No area has been so designated since April 24, 1965, when an Executive Order designated Vietnam and certain adjacent waters as a combat zone.

H.R. 4206

H.R. 4206 would extend the income tax exemption of section 692 to apply to any active member of the United States Armed Forces who dies as a result of a hostile action outside the United States, whether or not the death occurs in an area officially designated as a combat zone. This exemption would apply to any income tax imposed with respect to taxable years beginning with the first taxable year in which the member of the Armed Forces first served outside the United States, and ending with the year of death. The bill also waives liability for income tax (and for any interest, penalties or additions to tax) for taxable years preceding such years of foreign service which are still open as of the date of death. The bill would apply to all taxable years of individuals dying after December 31, 1979.

Discussion

The Administration strongly supports this proposal. We also commend this Subcommittee for its quick action in scheduling a hearing on this legislation in order to help assure its prompt

passage.

We suggest, however, that several modifications be made to the bill as currently drafted. First, we recommend that the exemption apply to members of the Armed Forces who die as a result of wounds, disease, or injury received in the line of duty outside the United States as a result of conflict on behalf of the United States, or as a result of aggression directed against the United States or one of its allies.

Second, we would advise against extending the exemption retroactively to all years beginning with the year in which the deceased individual first was sent abroad. Such a rule would require the family of any deceased individual to go through the procedure of filing a claim for refund with the Internal Revenue Service in order to recover taxes paid for prior years. This requirement would run counter to one of the principal purposes of this exemption, which is to eliminate the need for any of these families to concern themselves with the tax liabilities of a deceased family member. Moreover, because the size of the refund claims would vary widely (depending upon how long the deceased person had served abroad as well as upon each individual's income), H.R. 4206 would result in the granting of significantly different sums of money to the families of those Armed Services personnel who are killed in the line of duty. We do not believe that this Subcommittee intends any such result.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET

ROUTE SLIP

TO John Roberts ✓	Take necessary action <input type="checkbox"/>
Mike Esposito	Approval or signature <input type="checkbox"/>
Tom Stanners	Comment <input type="checkbox"/>
Hilda Schreiber	Prepare reply <input type="checkbox"/>
	Discuss with me <input type="checkbox"/>
	For your information <input type="checkbox"/>
	See remarks below <input type="checkbox"/>
FROM <i>GWJ</i> Greg Jones (x3856)	DATE 11/8/83

REMARKS

Attached is language approved by ~~the~~ a House Ways and Means Subcommittee on HR 4206 -- exemption from income tax for service members killed as a result of a hostile action. The Subcommittee has voted to broaden the provision to include civilian employees, as well.

Full committee markup is scheduled for tomorrow, 11/9.

I need your comments on the attached language by 9:00 AM tomorrow morning.

Thanks.

cc: Jim Murr

Amendment to H.R. 4206

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. INCOME TAXES OF CERTAIN MILITARY AND CIVILIAN EMPLOYEES OF THE UNITED STATES DYING AS A RESULT OF INJURIES SUSTAINED OVERSEAS.

(a) General Rule.--Section 692 of the Internal Revenue Code of 1954 (relating to income taxes of members of the Armed Forces on death) is amended by adding at the end thereof the following new subsection:

"(c) Certain Military or Civilian Employees of the United States Dying as a Result of Injuries Sustained Overseas.--

"(1) In general.--In the case of any individual who dies while a military or civilian employee of the United States, if such death occurs as a result of wounds or injury incurred outside the United States in a hostile action, any tax imposed by this subtitle shall not apply--

"(A) with respect to the taxable year in which falls the date of his death, or

"(B) with respect to any prior taxable year in the period beginning with the last taxable year ending before the taxable year in which the wounds or injury were incurred.

"(2) Hostile action.--For purposes of paragraph (1), the term 'hostile action' means--

"(A) any terroristic activity directed against the United States or any of its allies, and

"(B) any military action involving the Armed Forces of the United States and resulting from violence or aggression against the United States or any of its allies (or threat thereof).

// For purposes of the preceding sentence, the term 'military action' does not include training exercises.

"(3) Treatment of multinational forces.--For purposes of paragraph (2), any multinational force in which the United States is participating shall be treated as an ally of the United States."

(b) Effective Date.--

(1) In general.--The amendment made by subsection (a) shall apply with respect to all taxable years (whether beginning before, on, or after the date of the enactment of this Act) of individuals dying after December 31, 1979.

(2) Statute of limitations.--Notwithstanding section 6511 of the Internal Revenue Code of 1954, the time for filing

a claim for credit or refund of any overpayment of tax resulting from the amendment made by subsection (a) shall not expire before the date 1 year after the date of the enactment of this Act.

THE WHITE HOUSE

WASHINGTON

February 29, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: War Powers Problem

The difficulty with the attached is that it recognizes a role for Congress in terminating the Lebanon operation, by granting veterans preference to those serving in Lebanon between August 20, 1982 and the date the operation ends, set either by Presidential proclamation or concurrent resolution of Congress. As drafted the bill is unconstitutional, since giving legal effect to a concurrent resolution of Congress would violate INS v. Chadha. Changing "concurrent" to "joint" would solve the legislative veto problem but not the broader war powers issue, since I do not think we would want to concede any definitive role for Congress in terminating the Lebanon operation, even by joint resolution presented to the President. (A veto of such a resolution could be overridden.)

In light of the imminence of the submission of this bill, I telephoned John Cooney with the above concerns. Cooney is waiting to hear from Justice, and will keep us posted. I noted that I saw no reason to fix beginning and termination dates in the bill at all. Conditioning the preference on the award of a campaign badge should suffice, since the badge will only be awarded for service within the pertinent time frames. Cooney will keep us posted.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF ADMINISTRATION
ROUTE SLIP

SPECIAL

TO <u>Fred Fielding</u>	Take necessary action <input type="checkbox"/>
<u>WH Counsel</u>	Approval or signature <input type="checkbox"/>
<u> </u>	Comment <input type="checkbox"/>
<u> </u>	Prepare reply <input type="checkbox"/>
<u> </u>	Discuss with me <input type="checkbox"/>
<u> </u>	For your information <input type="checkbox"/>
<u> </u>	See remarks below <input type="checkbox"/>

FROM Hilda Schreiber Legislative Reference Div DATE 2-29-84
OMB- 395 X4650

REMARKS

The attached language is likely to be added to a pending veterans readjustment employment bill in markup tomorrow in the House Veterans Affairs Committee.

John Cooney of our GC staff thinks it may raise constitutional and war powers issues. We need your view ASAP. Cooney is sending to OLC in Justice, as well.

cc: John Roberts ✓

SPECIAL

A Bill

To extend eligibility for veterans readjustment appointments to veterans of the military operations in Lebanon and Grenada.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that title 38, United States Code, is amended -- (1) by amending section 2011 by adding at the end thereof the following new paragraphs:

"(6) The term 'veteran of the Lebanon operation' means an eligible veteran who served on active duty occurred in Lebanon during the period beginning August 20, 1982 and ending on such date thereafter as may be determined by Presidential proclamation or concurrent resolution of the Congress, and who was awarded a campaign badge for such service.

"(7) The term 'veteran of the Grenada operation' means an eligible veteran who served on active duty in Grenada during the period October ²³~~24~~, 1983 through November 21, 1983, and was awarded a campaign badge for such service." and

(2) by amending section 2014 by adding at the end thereof the following new subsection:

"(h) The provisions of Executive Order Numbered 11521, as amended by subsection (b) of this section, shall be applicable to veterans of the Lebanon and Grenada operations, as defined in section 2011 (6) and (7) of this title."

Section Analysis of
Proposed Legislation

"To extend eligibility for veterans readjustment appointments to veterans of the military operations in Lebanon and Grenada".

The proposed legislation amends sections 2011 and 2014 of title 38, United States Code. Section 2011, which provides definitions for chapter 42 of title 38 relating to employment and training of disabled and Vietnam era veterans, is amended by adding paragraphs (6) and (7) which respectively define "veteran of the Lebanon operation" and "veteran of the Grenada operation".

"Veteran of the Lebanon operation" is defined as meaning an "eligible veteran" who served on active duty in Lebanon during the period beginning August 20, 1982 and ending on such date as may be determined by Presidential proclamation or concurrent resolution of the Congress and who was awarded a campaign badge for such service. ("Eligible veteran is defined by paragraph (4) as including veterans discharged with other than dishonorable discharges).

Proposed section 2011 (7) defines "veteran of the Grenada operation" similarly, while relating to service in Grenada during the period October ²³~~24~~, 1983 through November 21, 1983, for which a campaign badge was awarded.

Section 2014, which relates to employment of veterans by the Federal Government, is amended by adding a subsection (h) providing that veterans of the Lebanon and Grenada operations are eligible for the veterans readjustment appointments provided for Vietnam era veterans by Executive Order Numbered 11521 of March 26, 1970, as amended by subsection (b) of section 2014.



United States
Office of
Personnel
Management

1900 E St., N.W.
Washington, D.C. 20415
News Unit, Room 5F10
(202) 632-5491

NEWS

FOR IMMEDIATE RELEASE:
Friday, February 24, 1984

Contact:
Sharon Wells

2/24/84
Regular →

Veterans' Preference for Lebanon and Grenadan Duty Will be Granted

(WASHINGTON, D.C.)—U.S. Office of Personnel Management Director Donald J. Devine today announced that his agency is issuing Federal Personnel Manual Guidance which instructs Federal agencies that veterans' preference may be granted to those armed forces personnel who served in Lebanon and Grenada.

A person is eligible for veterans' preference in the Federal service if he/she has "...served on active duty in the armed forces during a war, in a campaign or expedition for which a campaign badge has been authorized..."

The Secretary of the Navy has approved the awarding of a campaign medal to Navy and Marine personnel involved in Lebanon operations. The beginning date of Lebanon service eligibility is August 20, 1982. No cut-off date has been established.

The Department of Defense has decided that service in the military operation in Grenada qualifies armed forces personnel for the Armed Forces Expeditionary Medal. The beginning date of eligibility is October 24, 1983 and the ending date is November 21, 1983.

Devine noted that, "any person showing proof of receipt of either of these campaign badges and separation under honorable conditions should be eligible for veterans' preference."

THE WHITE HOUSE

WASHINGTON

March 5, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: War Powers Problem

OPM has agreed not to submit the bill to give certain preferences to veterans of Grenada and Lebanon in the form originally proposed, which would have violated INS v. Chadha and our position on the constitutionality of the War Powers Resolution. The bill will be revised so it contains no references to a Congressional role in terminating the Lebanese operation. At this point OPM is reassessing the desirability of the bill on grounds unrelated to our objections, but if OPM does decide to go forward we will be given an opportunity to review their revised proposal before it is submitted.